

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

Jointly Administered

**RESPONSE OF NAP NORTHPOINT, LLC TO LIQUIDATING
TRUST'S FORTY-FIRST OMNIBUS OBJECTION TO LANDLORD
CLAIMS (REDUCTION OF CERTAIN INVALID CLAIMS-MITIGATION)
(Claim No. 12497)**

NAP Northpoint, LLC ("NAP") hereby files its response (the "Response") to the Liquidating Trust's Forty-First Objection to Landlord Claims (the "Objection"). In the Objection, the Liquidating Trust asserts that NAP's Claim No. 12497 (the "Claim") filed in the amount of \$897,794.02 should be reduced and allowed in the sum of \$73,148.02. NAP opposes the relief sought by the Liquidating Trust in the Objection and asks that the Claim be allowed in the full amount in which it was filed. In support of its Response, NAP states the following:

1. The Liquidating Trust's Objection asserts that the Claim should be reduced subject to modification upon timely receipt of mitigation information.
2. The Claim should not be reduced as NAP was unable to mitigate the damages sought in its Claim. NAP was not able to find a new tenant for the location (1843 Pine Island Road, Cape Coral, FL 33909, also known as store number 4136 (the "Location")) that was

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rejected by Circuit City pursuant to Bankruptcy Code Section 365(d)(2) and procedures approved by this Court. The rejection was effective March 10, 2009 (the "Rejection").

3. Since the date of the Rejection and prior to that date, NAP employed an in-house broker to manage the occupancy of leased spaces, including the Location and the surrounding shopping center. For more than two years, the in-house broker was unable to find a new tenant for the space Circuit City rejected. In April of 2011, NAP sold the Location at a significant discount because the space previously occupied by Circuit City remained vacant. Further, the in-house broker continues to try to market the space, as the vacancy reflects upon NAP's remaining assets in the shopping center.

4. The party with authority to discuss mitigation issues and the facts stated in this Response is the following:

Rich Hering
North American Properties
7500 College Parkway
Fort Myers, Florida 33907
Telephone: (239) 938-3340
rich.hering@napproperties.com

WHEREFORE, NAP requests that the Court deny the Liquidating Trust's Objection to NAP's Claim No. 12497 and that claim be allowed by Court order in the amount of \$897,794.02.

Dated: June 5, 2012

CHRISTIAN & BARTON, LLP

/s/ Jennifer M. McLemore

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CERTIFICATE OF SERVICE

I, Jennifer M. McLemore, hereby certify that on the 5th day of June 2012, a true and correct copy of the foregoing Response of NAP Northpoint, LLC to Liquidating Trust's Forty-First Omnibus Objection to Landlord Claims (Reduction of Certain Invalid Claims-Mitigation) (Claim No. 12497) has been served electronically using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

/s/ Jennifer M. McLemore

Jennifer M. McLemore

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